

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN RE:

**Chapter: 7
Case No.: 08-31457**

MICHAEL FRANCIS PUSATERI, III

SS: XXX-XX-1888

Debtor.

CONGRESSIONAL FEDERAL CREDIT UNION

Plaintiff,

v.

Adversary No.: 08-03149

MICHAEL FRANCIS PUSATERI, III

Defendant.

**MOTION TO DISMISS SECOND AMENDED COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT**

The Defendant, through undersigned counsel, moves to dismiss the Second Amended Complaint to Determine Dischargeability of Debt filed by Plaintiff on the grounds that Plaintiff has wholly failed to comply with Bankruptcy Rule 12(b)(6), to adequately state the particular charges intended to be made by Defendant for luxury goods and services less than ninety (90) days prior to the filing of the Petition as required by 11 U.S.C. § 523(a)(2)(C) and failing to comply with the Order Denying Defendants Motion to Dismiss pursuant to Bankruptcy Rule 7007.1(a)(b), 7012(b)(6) and 7009(b) and Granting Defendants Motion for More Definite Statement Pursuant to Bankruptcy Rules 7012(e) entered April 2, 2009, and shows unto the Court and support thereof as follows:

1. The Order of the Court entered April 2, 2009, referenced above, required Plaintiff to amend its Complaint to include the specific number of charges made by Defendant on the account between January 1, 2008 and the filing date;
2. The Second Amended Complaint to Determine Dischargeability of Debt filed by Plaintiff on April 9, 2009 satisfies that portion of the Order.
3. The April 2, 2009 the Order mostly required the Plaintiff to allege with particularity the specific charges for luxury goods or services made by Defendant within ninety (90) days prior to the filing of the Petition which are relied upon by Plaintiff as a basis for imposition of the presumption provided in 11 U.S.C. § 523(a)(2)(C)(i)(I)(ii)(II).

Based upon the foregoing, Defendant prays that the Court:

1. Dismiss the Second Amended Complaint to Determine Dischargeability of Debt filed by Plaintiff in its entirety or;
2. Preclude Plaintiff from any reliance upon the provision of 11 U.S.C. § 523(a)(2)(C) with respect to its claim based upon alleged false pretenses, false representation, or actual fraud; and
3. Grant Defendant such other and further relief as the Court deems just and proper.

DATED: _____

David R. Badger
N.C. State Bar No.: 156
Attorney for Defendant
DAVID R. BADGER, P.A.
2108 South Boulevard
Suite 118 Atherton Lofts
Charlotte, NC 28203
Telephone: (704) 375-8875
Facsimile: (704) 375-8835

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN RE:

**Chapter: 7
Case No.: 08-31457**

MICHAEL FRANCIS PUSATERI, III

SS: XXX-XX-1888

Debtor.

CONGRESSIONAL FEDERAL CREDIT UNION

Plaintiff,

v.

Adversary No.: 08-03149

MICHAEL FRANCIS PUSATERI, III

Defendant.

NOTICE OF HEARING

TAKE NOTICE that debtors' attorney has filed a Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt.

TAKE FURTHER NOTICE that a hearing to consider said Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt will be held before the United States Bankruptcy Judge at **9:30 a.m.**, on **May 14, 2009** in the U.S. Bankruptcy Court, 401 West Trade Street, Charlotte, North Carolina. All interested parties may attend and be heard.

Dated: _____

David R. Badger
Attorney for Defendant
N.C. State Bar #156
DAVID R. BADGER, P.A.
2108 South Boulevard
Suite 118 Atherton Lofts
Charlotte, North Carolina 28203
Telephone No.: (704) 375-8875

IN RE:

Chapter: 7
Case No.: 08-31457

MICHAEL FRANCIS PUSATERI, III

SS: XXX-XX-1888

Debtor.

CONGRESSIONAL FEDERAL CREDIT UNION

Plaintiff,

v.

Adversary No.: 08-03149

MICHAEL FRANCIS PUSATERI, III

Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this date served a copy of the foregoing **Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt/Notice of Hearing** upon all parties listed below by depositing same in the U.S. Mail, postage pre-paid, addressed as follows:

Heather W. Culp
Mitchell & Culp
1001 Morehead Square Drive, Suite 330
Charlotte, NC 28203

Michael Francis Pusateri, via e-mail

Roderick H. Angus
Huston & Angus
5529 Lee Highway
Arlington, VA 22207

The undersigned further certifies that he has this date served a copy of the **Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt/Notice of Hearing** on all parties listed below by electronic case filing:

Bankruptcy Administrator

Dated: _____

David R. Badger
Attorney for the Defendant
N.C. State Bar #156
DAVID R. BADGER, P.A.
2108 South Boulevard
Suite 118 Atherton Lofts
Charlotte, North Carolina 28203
Telephone No.: (704) 375-8875
Facsimile No.: (704) 375-8835